UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
NORTHWEST DIVISION

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| UNITED STATES OF AMERICA,<br><br>Plaintiff,<br><br>v.<br><br>ALUMINUM COMPANY OF AMERICA<br>and<br>REYNOLDS METALS COMPANY,<br><br>Defendants. | Civil Action No.:<br><br>Filed: |

COMPLAINT

The United States of America, plaintiff, acting under the direction of the Attorney General, brings this civil action to enjoin Aluminum Company of America ("Alcoa"), the largest producer of aluminum for beverage cans in the United States, from acquiring the competing production facility of Reynolds Metals Company ("Reynolds"), the third largest producer. If the acquisition is permitted to proceed, it would cause the immediate shutdown of the Reynolds facility in Muscle Shoals, Alabama, and would substantially lessen competition in the production of aluminum can stock in the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. As a result, American consumers would pay more for their beverages in cans.

1. Alcoa and Reynolds are competing producers of a rolled aluminum sheet product known as beverage can stock ("can stock"). There are two types of beverage can stock -- body stock, which is used to make the body of a beverage can, and end/tab stock, which is used to

make the lid and pull tab of a beverage can. In 1996, U.S. sales of body stock were $3.2 billion; U.S. sales of end/tab stock were $1.4 billion.

2. The beverage can stock business is highly concentrated, with the four largest producers accounting for over 90 percent of U.S. sales. Alcoa and Reynolds are the number one and two producers of end/tab stock, and together account for 67 percent of the market's production capacity. Alcoa and Reynolds are also the second and fourth largest producers of body stock.

3. The Reynolds facility in Muscle Shoals will be closed as a result of the transaction. Under its agreement with Alcoa, Reynolds must close down the facility (and pay the associated costs) before transferring ownership to Alcoa. Alcoa has no need for additional can stock production capacity, nor any present intention to use the facility to produce can stock. The transaction will thus result in a significant reduction in capacity to produce can stock.

4. The loss of Reynolds as an independent competitor in the production and sale of can stock will make it easier for the few remaining aluminum can stock producers to increase the price of body stock and end/tab stock in the United States. Ultimately, beverage consumers throughout the United States will pay those price increases.

## I.

## JURISDICTION AND VENUE

5. This action is filed under Section 15 of the Clayton Act (15 U.S.C. § 25), to prevent and restrain the violation by the defendants, as hereinafter alleged, of Section 7 of the Clayton Act (15 U.S.C. § 18).

6. Alcoa and Reynolds sell and ship substantial quantities of can stock and other products from locations in one state to locations in other states throughout the United States.

7. Alcoa and Reynolds are engaged in interstate commerce and in activities that substantially affect interstate commerce. The Court has jurisdiction over this action and over the defendants pursuant to 28 U.S.C. §§ 1331 and 1337. Venue is proper in this district under 15 U.S.C. § 22, and 28 U.S.C. § 1391(b) and (c).

II.

THE DEFENDANTS

8. Alcoa is a corporation organized and existing under the laws of the State of Pennsylvania, with its principal offices in Pittsburgh, Pennsylvania. Alcoa is the second largest producer of aluminum products in the United States and the world's largest integrated aluminum company. Alcoa is engaged in all phases of the aluminum business -- from mining and processing of bauxite to the production of primary aluminum and fabrication of products. In 1996, Alcoa had revenues in excess of $13 billion, more than three-fourths of which came from the sale of aluminum products.

9. Reynolds is a corporation organized and existing under the laws of the State of Virginia, with its principal offices in Richmond, Virginia. Reynolds is the largest producer of aluminum products in the United States and is the third largest producer of aluminum products in the world. Reynolds is also engaged in all phases of the aluminum business. Reynolds is the only major can stock producer that also manufactures aluminum beverage cans. Reynolds' 1996 revenues were almost $7 billion, more than 80 percent of which came from the sale of aluminum products.

10. Alcoa operates two rolling mills in the United States that are dedicated to the production of can stock -- Alcoa, Tennessee (body stock) and Warrick, Indiana (end/tab stock). Reynolds produces can stock (both body and end/tab) at one rolling mill -- the Listerhill facility located in Muscle Shoals, Alabama.

## III.

## THE TRANSACTION

11. Pursuant to a letter of intent dated April 14, 1997, Alcoa agreed to pay at least $250 million for Reynolds' can stock production assets: the Listerhill rolling mill, two aluminum can reclamation plants, and an aluminum coil coating facility. Reynolds must close down these assets prior to transferring ownership to Alcoa. Alcoa plans to re-open only the coil coating facility. Alcoa and Reynolds will also enter a supply contract under which Alcoa will supply Reynolds' can making division, which manufactures aluminum beverage cans, with most of its can stock needs for seven years. Alcoa can fulfill the supply agreement with its existing capacity.

## IV.

## TRADE AND COMMERCE

12. Aluminum can stock is manufactured in a rolling mill. A typical rolling mill contains a hot mill, which performs the initial reduction of the thickness of the ingot, one or more cold mills, which finish the metal to the desired thickness and width, and a variety of ancillary equipment. Rolling mills fabricate a wide range of products, including plate used for trailer trucks and the aerospace industry, siding for houses, sheet for making cooking utensils, household foil, and can stock for food and beverage cans. The types of products a particular rolling mill can

produce depend on the configuration of equipment in the plant, including the horsepower of the hot mill, the number and type of cold mills, and the type of ancillary equipment.

13. Four companies dominate the can stock business in the United States: Alcoa, Alcan Aluminum Corporation, Reynolds, and Atlantic Richfield Corporation. These four companies accounted for 90% of the can stock sales in the United States in 1996. Most of the other firms that produce can stock do not produce end/tab stock.

14. Can stock producers sell virtually all their body and end/tab stock to can makers who, in turn, produce beverage cans. From the 4.2 billion pounds of can stock produced in 1996, can makers produced approximately 100 billion can bodies and lids in the United States.

15. Can stock is sold in large coils that can be over five feet wide and weigh up to 40,000 lb. The coils are fed into can body-making machines, which stamp out a circular piece of aluminum and form a small cup. A machine then "draws" the cup to the desired height of the can and "irons" the surface to make it smooth and of even thickness. Coils of can end/tab stock are fed into lid-making machines that stamp out rings that are attached to scored circles to form the lid.

16. Aluminum can end/tab stock differs from body stock. Aluminum can end/tab stock is made of harder alloys than is body stock, and requires more powerful mills and more mill time to produce than body stock. End/tab stock is therefore more expensive per pound than body stock. Body stock cannot be used to make lids and end/tab stock cannot be used to make bodies. Used aluminum cans can be remelted to make body stock, but not end/tab stock.

17. Can makers sell the bodies and lids to beverage companies who fill them with beer or soft drinks and then seal the cans. In addition to cans, the beverage companies purchase other

containers for their products. Brewers also purchase 12-ounce glass bottles; soft drink bottlers also purchase plastic bottles larger than 12-ounce. For both beverages, the familiar 12-ounce aluminum can is the overwhelming favorite and is the single-serve container consumers purchase in by far the largest quantities. The aluminum can is also the least costly 12-ounce container to manufacture, fill and distribute. Finally, the shelf life of soft drinks in aluminum cans is much longer than in single-serve plastic bottles, nine or ten months for cans versus four months or less for plastic bottles.

V.

RELEVANT PRODUCT MARKETS

18. Aluminum can stock differs from all other beverage container materials, including steel, glass, and plastic, in its physical characteristics, means of production, and pricing. Aluminum can stock prices are not linked to the prices of the other container materials.

19. Can makers cannot use their existing plants and equipment to produce beverage cans from other materials such as steel, plastic resin or glass. As a result, can makers do not switch between aluminum and other container materials in response to changes in the relative prices of steel, glass or plastic containers.

20. The proportion of a beverage company's product that it sells in aluminum cans is determined by a number of factors, including the shelf life of a beverage in the container, consumer preference for the container, unit cost of the container, filling and sealing costs of the container, and distribution costs of handling the container. The unit cost of the container is but one factor, and this cost would have to change significantly to outweigh all of the other factors

and cause a beverage company to alter the proportion of its product that it distributes in aluminum cans.

21. The ultimate consumer's choice of beverage container is unlikely to be significantly affected by the increase in the retail price of a can of beer or soda that a five or ten percent increase in the price of can stock may cause. (A ten percent increase in the price of can stock, for example, would cause the cost of a 24-pack of canned beverages to increase by less than ten cents. Because consumers' container preferences will not change in response to small changes in relative container prices, beverage manufacturers will not substitute other containers for aluminum cans in response to those price changes.

22. Because of the differences between end/tab stock and body stock, can makers cannot and do not shift their purchases between body stock and end/tab stock in response to relative price changes between body stock and end/tab stock.

23. The manufacture and sale of end/tab stock constitutes a relevant product market and a separate line of commerce.

24. The manufacture and sale of body stock constitutes a relevant product market and separate line of commerce.

## VI.

## RELEVANT GEOGRAPHIC MARKET

25. Can stock is sold throughout the United States, and manufacturers of can stock compete for sales to customers located throughout the United States. Imports account for less than 5 percent of U.S. sales. Both Alcoa and Reynolds sell can stock nationwide. The United States constitutes a geographic market for the production and sale of can stock.

VII.

CONCENTRATION AND ENTRY

26. In 1996, Alcoa accounted for 50 percent of end/tab sales and 34 percent of body stock sales in the United States. Reynolds accounted for 19 percent of end/tab stock sales and 14 percent of body stock sales in the United States. Based on 1996 production capacity, Alcoa's shares were 51 percent and 26 percent respectively, and Reynolds' shares were 16 percent and 11 percent. Together, they represented 67 percent of end/tab capacity in the United States and 37 percent of body stock capacity in the United States.

27. The markets for end/tab stock and body stock are highly concentrated. The top four end/tab stock producers account for approximately 90 percent of 1996 sales and 90 percent of production capacity. The top four body stock producers account for approximately 90 percent of 1996 sales and 78 percent of production capacity.

28. Using a measure of market concentration called the Herfindahl-Hirschman Index ("HHI"), defined and explained at Appendix A, a combination of Alcoa and Reynolds would substantially increase the concentration in the already highly concentrated U.S. body stock and end/tab stock markets.

29. The approximate post-merger HHI for can end/tab stock, based on 1996 capacity of firms with rolling mills located in the United States, would be about 5000, with an increase in the HHI resulting from the merger of over 1600 points.

30. The approximate post-merger HHI for can body stock, based on 1996 capacity of firms with rolling mills located in the United States, would be about 2800, with an increase in the HHI resulting from the merger of over 600 points.

31. Successful entry into the production and sale of can stock is difficult, time consuming and costly. To build an efficient, high volume can stock rolling mill would cost at least $1 billion, and would require as many as four years from the time of site selection. The equipment needed to produce can stock is custom-engineered and would take at least two years to design, manufacture and install.

32. The production of can stock is a sophisticated and technologically-demanding process compared to the production of most other rolled aluminum products. The acceptable margin for error in meeting customer specifications for can stock is very small. Rolling mills must be specifically designed or modified to produce can stock. The modification of an existing mill or construction of a new facility is costly and would take a year or more.

33. A new entrant into can stock manufacturing must "qualify" its product with each can-making plant before it will be accepted as a supplier at that plant. A new entrant must establish a reputation for good quality product and for reliability in fulfilling customer orders.

34. There are no other domestic or foreign firms whose entry or expansion would be likely, timely and sufficient to thwart an anticompetitive price increase.

## VIII.

## ANTICOMPETITIVE EFFECTS

35. The proposed acquisition will remove one of only a few significant suppliers from an already concentrated market. It will also remove from the market the rolling capacity that Reynolds has operated. The increase in concentration will make a price increase through anticompetitive coordination by the few remaining firms easier and more likely.

IX.

VIOLATION ALLEGED

36. On April 14, 1997, Alcoa and Reynolds entered into an agreement whereby Alcoa would acquire Reynolds' rolling mill and related assets located in Muscle Shoals, Alabama.

37. The effects of the acquisition, if consummated, may be to lessen competition substantially and tend to create a monopoly in interstate trade and commerce in violation of Section 7 of the Clayton Act in the following ways, among others:

a. Competition between Alcoa and Reynolds in the production and sale of can body stock and end/tab stock will be eliminated;

b. Competition generally in the production and sale of can body stock and can end/tab stock may be substantially lessened;

c. Coordinated pricing activity among the producers and sellers of can body stock and can end/tab stock likely will be facilitated; and

d. Prices for can body stock and can end/tab stock in the United States are likely to increase.

PRAYER

WHEREFORE, Plaintiff prays:

1. That a permanent injunction be issued preventing and restraining the defendants and all persons acting on their behalf from consummating the agreement alleged in paragraph 37, or any other plan or agreement to sell part or all of Reynolds' Listerhill facility to Alcoa, except on such terms and conditions as may be agreed to by plaintiff and the Court.

2. That the proposed acquisition be adjudged a violation of Section 7 of the Clayton Act.

3. That the plaintiff have such other and further relief as the nature of this case may require and as this Court may deem just and proper.

4. That the plaintiff recover the costs of this action.

Dated: December 29, 1997


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# APPENDIX A
# DEFINITION OF "HHI"

The term "HHI" means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. The HHI is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 2,600$). The HHI takes into account the relative size and distribution of the firms in a market. It approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches its maximum of 10,000 when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 are considered to be moderately concentrated, and markets in which the HHI is in excess of 1800 points are considered to be highly concentrated. Transactions that increase the HHI by more than 100 points in highly concentrated markets presumptively raise significant antitrust concerns under the Department of Justice and Federal Trade Commission 1992 Horizontal Merger Guidelines.